

State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES
6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-3503 FAX (603) 271-2867



Louis E. Krause
2415 Elm Street
Manchester, NH 03104

Re: Echo Point Road
Alton, NH

**NOTICE OF PROPOSED
ADMINISTRATIVE FINE
AND HEARING
No. AF 01-039**

May 16, 2001

I. Introduction

This Notice of Proposed Administrative Fine and Hearing is issued by the Department of Environmental Services, Water Division (the Division) to Louis E. Krause, pursuant to RSA 482-A and Env-C 614. The Division is proposing that fines totaling \$1,500 be imposed against Louis E. Krause for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

II. Parties

1. The Department of Environmental Services, Water Division, is an administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH.
2. Louis E. Krause (Mr. Krause) is an individual having a mailing address of 2415 Elm Street, Manchester, NH 03104.

III. Summary of Facts and Law Supporting Claims

1. Pursuant to RSA 482-A, the Department of Environmental Services (DES) regulates dredging, filling, and construction in wetlands. Pursuant to RSA 482-A:11, I, the Commissioner of DES has adopted Wt 100 *et seq.* to implement this program.
2. Pursuant to RSA 482-A:13 and RSA 482-A:14, III, the Commissioner is authorized to impose fines of up to \$2,000 per violation for violations of the statute, of rules adopted pursuant to the statute, or of any order or permit issued under the statute. Pursuant to RSA 482-A:11, I, the Commissioner has adopted Env-C 614 to establish the schedule of fines for such violations.
3. RSA 482-A:3, I states in part that no person shall excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without a permit from [DES].
4. Wt 402.13 specifies the number of slips allowed based on lake frontage. Specifically, Wt 402.13 states there shall be a minimum of 75' of water frontage on the property for the first two-slip structure, and an additional 75' of water frontage on the property for each additional boating

slip or securing location on a structure for non-commercial use. Pursuant to Wt 402.13, 3 slips are allowed on 155 feet of frontage.

5. Mr. Krause is the owner of real estate located on Echo Point Road, more particularly identified on Town of Alton at Tax Map 41, as Lot 17 (the Property).

6. On June 6, 1995, the N.H. Wetlands Board, the predecessor to DES for wetlands regulation, issued permit number 95-00725 (the Permit) to Mr. Krause to repair an existing docking structure on the shoreline of the Property. The Permit was to [r]epair two 6' x 33' crib supported fingers 12' between (U-shaped dock). Replace two of the four (6'x6') cribs with pilings. Drive two ice cluster pilings on 155' of frontage in accordance with approved plans received by the N.H. Wetlands Board on May 3, 1995 .

7. The May 3, 1995, plans referenced in the Permit show two docks in a U-shaped configuration. Photographs submitted in support of the application for the Permit are consistent with the plans incorporated into the Permit.

8. On July 26, 2000, the Division received a Minimum Impact Expedited Application from Mr. Krause (the 2000 Application) to repair pilings damaged by ice. The plans submitted by Mr. Krause in support of the 2000 Application are consistent with the May 3, 1995 plans incorporated into the Permit depicting two docks in a U-shaped configuration. A black and white photocopy of a photograph of the docks submitted in support of the 2000 Application showed only the ends of two docks.

9. On August 24, 2000, the Division mailed a Notification of Incomplete Expedited Application (the Notification) to Winnepesaukee Marine Construction Company, the contractor identified in the 2000 Application. The Notification requested (1) an original plan that included the dimensions of all components of the structure as they currently exist; and (2) color photographs showing the entire docking facility.

10. On September 7, 2000, the Division received a response to the Notification from Mr. Krause. Mr. Krause provided a sketch of the existing docking structures. The sketch depicted the two original docks that were the subject of the Permit, as well as a third narrower finger extending from the northeast side of the two-finger docking structure. Color photographs included in Mr. Krause's response show a three-finger docking structure on the Property.

11. On October 3, 2000, Division personnel inspected the docking structure on the Property. During this inspection, the following deficiencies were observed:

- a. A three-finger permanent docking structure has been constructed off the shore of the Property. Two of the fingers were 6' wide and 24' long and were consistent with U-shaped structure shown on the plan that was incorporated into the Permit.
- b. A third finger extends from the northeast side of the U-Shaped structure. The third dock was measured during the inspection to be 1'3" wide and 21'8" long.

12. The third dock creates a fourth slip on 155 feet of frontage.

13. The Division has no record of a permit issued for the construction of a three-finger, four-slip docking structure on the Property.
14. Env-C 614.04(d) defines a Class III Violation in part as [u]nauthorized construction or modification of a permanent pier, wharf, or other similar docking structure listed under Wt 402, with a total of 3 or 4 slips, including previously existing slips.
15. Env-C 614.04 authorizes a fine of \$1,500 for Class III Violations.

IV. Violations Alleged

1. Mr. Krause has violated RSA 482-A:3, I by constructing a third dock on an existing 2 dock structure, creating a fourth slip on 155 feet of frontage without a permit from DES.

V. Proposed Administrative Fines

1. For the violation identified in IV.1 above, Env-C 614.04(d) specifies a fine of \$1,500.

The total fine being sought is \$1,500.

VI. Hearing, Required Response

You have the right to a hearing to contest the Division's allegations before the fine is imposed. A hearing on this matter has been scheduled for **Monday, July 30, 2001 at 2:30 p.m. in Room C-110** of the DES offices at 6 Hazen Drive in Concord, NH. **Pursuant to Env-C 601.06, you are required to respond to this notice. Please respond no later than June 29, 2001**, using the enclosed colored form as follows:

1. If you plan to attend the hearing, please sign the appearance (upper portion) and return it to James Ballentine, DES Enforcement Paralegal, as noted on the form.
2. If you choose to waive the hearing and pay the proposed fine, please sign the waiver (lower portion) and return it **with payment of the fine** to Mr. Ballentine.
3. If you wish to discuss the possibility of settling the case, please sign the appearance and return it to Mr. Ballentine **and** call Mr. Ballentine to indicate your interest in settling.

You are not required to be represented by an attorney. If you choose to be represented by an attorney, the attorney must file an appearance and, if a hearing is held, submit proposed findings of fact to the person conducting the hearing.

If you wish to have a hearing but are unable to attend as scheduled, you must notify Mr. Ballentine at least one week in advance of the hearing and request that the hearing be rescheduled. If you do not notify Mr. Ballentine in advance and do not attend the hearing, the hearing will be

conducted in your absence in accordance with Env-C 204.09.

VII. Determination of Liability for Administrative Fines

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that you committed the violations alleged and that the total amount of fines sought is the appropriate amount under the applicable statute and rules. Proving something by a preponderance of the evidence means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that you committed the violations and that the total amount of fines sought is the appropriate amount under the applicable statute and rules, then the fine sought will be imposed, subject to the following:

- * Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below **that you prove, by a preponderance of the evidence**, applies in this case:
 1. The violation was a one-time or non-continuing violation, **and** you did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** you did not benefit financially, whether directly or indirectly, from the violation.
 2. At the time the violation was committed, you were making a good faith effort to comply with the requirement that was violated.
 3. You have no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.
 4. Other information exists which is favorable to your case which was not known to the Division at the time the fine was proposed.


*****IMPORTANT NOTICE*****

The hearing that has been scheduled is a formal hearing. The hearing will be tape recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that you committed the violation(s) alleged above and that the fine(s) should be imposed. **The hearing is your opportunity to present testimony and evidence that you did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced.** If you have any evidence, such as photographs, business records or other documents, that you believe show that you did not commit the violation(s) or that otherwise support your position, you should

bring the evidence to the hearing. You may also bring witnesses (other people) to the hearing to testify on your behalf.

If you wish to have an informal meeting to discuss the issues, you must contact Mr. Ballentine at (603) 271-6072 to request a prehearing conference.

Information regarding this proposed fine may be made available to the public via the DES Web page (www.state.nh.us.des). If you have any questions about this matter, please contact James Ballentine, DES Enforcement Paralegal, at (603) 271-6072.


fns **COPY**
Harry T. Stewart, P.E., Director
Water Division

Enclosure (NHDES Fact Sheet #CO-2 2000)

cc: Gretchen Rule, DES Enforcement Coordinator
Susan Alexant, DES Hearings and Rules Attorney
Alton Conservation Commission
Alton Board of Selectmen
Marjory Swope, NHACC
Michael Walls, DOJ/EPB
Richard W. Head, DES (File #00-1573)

~

***** RETURN THIS PAGE ONLY *****

APPEARANCE

____ I will attend the hearing scheduled for **Monday, July 30, 2001 at 2:30 p.m.** in Room C-110 of the DES offices at 6 Hazen Drive in Concord, NH.

Signature

Date

Name (please print or type): _____

Title: _____

WAIVER OF HEARING

____ I certify that I understand my right to a hearing regarding the imposition of the proposed administrative fine and that I hereby waive those rights. The fine payment in the amount of \$ 1,500 paid to Treasurer, State of New Hampshire is enclosed.*

** If you pay by check, draft, or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the original check draft, or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to collecting the amount of the original check draft, or money order.*

Signature

Date

Name (please print or type): _____

Title: _____

RETURN THIS PAGE ONLY TO:

James Ballentine, DES Enforcement Paralegal
Department of Environmental Services
6 Hazen Drive
P.O. Box 95
Concord, NH 03302-0095